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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/594,142	11/21/2006	Hiromi Takarada	TOR-06-1354	8937
35811 7590 06/15/2009 IP GROUP OF DLA PIPER LLP (US) ONE LIBERTY PLACE 1650 MARKET ST, SUITE 4900 PHILADELPHIA, PA 19103				
EXAMINER SALVATORE, LYNDIA				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
06/15/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/594,142

**Applicant(s)**

TAKARADA ET AL.

**Examiner**

LYNDA M. SALVATORE

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3 and 5-15 is/are pending in the application.
- 4a) Of the above claim(s) 8-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date: \_\_\_\_\_

**DETAILED ACTION**

***Response to Amendment***

1. Applicant's request for continuing examination (RCE), amendment and accompanying remarks filed 2/13/09 and 4/24/09 have been fully considered and entered. Claims 1, 3 and 6 have been amended. Applicant's remarks are found persuasive to overcome the rejections of claims 1-3 and 5-7 rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Maurer et al., US 6,207,601. Specifically, the fabric of Maurer is a non-woven rather than the claimed woven or knit and does not have the claimed CV (coefficient of variation) property. As such, these rejections are hereby withdrawn. However, upon further consideration the following new ground of rejection is set forth herein below.

***Claim Rejections - 35 USC § 102/103***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1-3 and 5-7 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Aranishi et al., US 6,984,631.

The patent issued to Aranishi et al., teach a melt-spun fiber comprising a mixture of a thermoplastic mixed cellulose ester and a plasticizer (column 3, 60-65). Said mixed ester is cellulose acetate propionate (column 10, 26-40). Aranishi et al., teach a degree of substitution of .5 to 2.9 per glucose unit (column 10, 41-45). Said plasticizer is in an amount ranging from 1-30 wt. % (column 3, 50-65). Said fibers also have a strength ranging from .7 to 3.8 cN/dtex (column 9, 1-10). Said fibers have a size ranging from .5-

100dtex (column 9, 20-30). Aranishi et al., teach that the fibers exhibit excellent mechanical properties and uniformity and are well suited for clothing (column 15, 30-40, column 16, 54-60). Aranishi et al., teach forming a knit fabric from the melt-spun filaments (column 17, 60-65 and column 19, 1-10).

Aranishi et al., does not explicitly teach the diameter of the filament, however, it is the position of the Examiner that it would be obvious to one having ordinary skill in the art to form the filament with an optimal diameter as function of desired end use (e.g., for clothing). It has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

Aranishi et al., does not teach the claimed molecular weight of the acyl units, initial tensile modulus, glass transition temperature or CV properties, however, it is reasonable to presume that said properties are inherent to the knitted fabric taught by Aranishi et al., Support for said presumption is found in the use of like materials such as a cellulose ester fiber and the use of like processes such as forming a knitted fabric from melt-spun continuous filaments, which would result in the claimed glass transition temperature and CV properties. Applicant is invited to prove otherwise. *In re Fitzgerald* 205 USPQ 594

In addition, the presently molecular weight of the acyl units, claimed initial tensile modulus, glass transition temperature and CV properties would obviously have been present once the knitted fabric of Aranishi et al., is provided. *In re Best*, 195 UPSQ 433

***Conclusion***

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LYNDA M. SALVATORE whose telephone number is (571)272-1482. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hendricks Keith can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

June 11<sup>th</sup>, 2009  
Art Unit 1794

/Lynda Salvatore/  
Primary Examiner